(28,994)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 444.

C. N. LOVE, W. L. DAVIS, J. B. GRIGSBY, *ET AL.*,
PLAINTIFFS IN ERROR,

vs.

JAMES S. GRIFFITH, ALVIN D. MOODY, ROBERT RING,
ET AL.

IN ERROR TO THE COURT OF CIVIL APPEALS, FIRST SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 6, 1922.

971

1 *Caption.*

THE STATE OF TEXAS,
County of Galveston:

At a term of the Court of Civil Appeals, First Supreme Judicial District of the State of Texas, begun and holden in the City of Galveston on the 6th day of October, 1920, and ending on the 30th day of June, 1921, there came on to be heard and determined the cause numbered and styled below; and at a term begun and holden in the City of Galveston on the 3rd day of October, 1921, and still in session, there came on to be heard and determined a motion for rehearing in said cause, as follows:

No. 8091.

C. N. LOVE et al., Appellants,

vs.

JAMES S. GRIFFITH et al., Appellees.

appealed to said Court of Civil Appeals from the 11th Judicial District Court in and for the County of Harris, State of Texas.

2 *Præcipe.*

C. N. LOVE et al., Plaintiffs in Error,

vs.

JAS. S. GRIFFITH et al., Defendants in Error.

H. L. Garrett, Esq., Clerk of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

DEAR SIR:

Writ of error having been granted in the above case from the Supreme Court of the United States, to the Court of Civil Appeals for the First Supreme Judicial District of Texas, we request you to insert in the record which you are preparing the following, as near as may be in the order here stated:

First. This Præcipe.

Second. The record sent up from the Trial Court of Harris County, to your Court.

Third. The Judgment and Opinion of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

Fourth. The Motion to Rehear.

Fifth. The order overruling the Motion to Rehear.

Sixth. The petition for the allowance of the Writ of Error, the Fiat of Chief Justice, R. A. Pleasants, allowing the same.

Seventh. The assignments of error accompanying the petition for a Writ of Error.

Eighth. The citation in error in this case signed by Chief Justice, R. A. Pleasants, on allowing the Writ of Error.

3 Ninth. Copy of the citation in error signed by Chief Justice, R. A. Pleasants, to which is attached acceptance of service of the Writ of Error and of notice of filing the same and acceptance of service of the citation by the defendants in error.

Tenth. The bond approved by Chief Justice R. A. Pleasants, on allowing the Writ of Error.

Eleventh. The Writ of Error filed herein.

Twelfth. The prayer for reversal filed in this Court by Plaintiffs in error.

Thirteenth. Your certificate in ample form, to all of the above.

Yours truly,

C. N. LOVE ET AL.,
Plaintiffs in Error,
By R. D. EVANS.

(Signed) R. D. EVANS,
Their Attorney.

Filed in Court Civil Appeals May 26, 1922.
H. L. GARRETT,
Clerk.

4 *Caption.*

THE STATE OF TEXAS,
County of Harris:

At a Term of the District Court begun and holden at Houston, Texas, within and for the county of Harris before the Honorable Charles E. Ashe, Judge of the 11th Judicial District Court in and for said County on the 7th day of February, 1921 and which last named Term is still in session, the following cause came on for trial, to wit:

No. 92765.

C. N. Love et al., Plaintiff-.

vs.

Jas. S. Griffith et al., Defendant-.

5 *Pltff's Original Petition.*

State of Texas,
County of Harris:

In the 11th Jud. District Court of Harris County, Texas, —— Term, A. D. 1921.

To the Hon. Chas. E. Ashe, Judge:

1. Now comes C. N. Love, W. L. Davis, J. B. Grigsby, William Nickerson Jr. Newman Dudley Jr. and Perry Mack, all of whom reside in the city of Houston, Harris County, Texas; herein after called plaintiffs, complaining of James S. Griffity, Alvin D. Mcody, Robert Ring, James E. Donovan and Fred D. Dwyer as members of the City Democratic Executive Committee of the City of Houston, Texas all of whom reside in the city of Houston, Texas, and G. W. Stacey, J. A. McGregor, J. A. Duncan, F. N. Ankerman, E. N. Mills, John Drennan, W. T. Glass, C. Grumwald, C. L. Fitch, Leo Weinberg, Geo. Kulhman, C. K. Seaman, J. W. Matthews, G. W. Tharp, J. A. Painter, Julius J. Settegast, J. F. Newman, J. W. Thiel, C. L. Bering, C. W. Plowden, Ingram S. Roberts, N. B. Judd, Ervin C. Brock, Will Miller, A. E. Griesenbeck, G. W. Richardson, J. R. Harper, E. V. Long, Theodore Werner, Albert W. Rosecher, E. M. Johnson, Dan Dixson, M. L. O. Andrews, P. M. Shoquitt, Fred Sellers, H. M. Wilcox, as judges of the city Democratic Primary Election to he holden on the 9th day of February, 1921, in the city of Houston, Texas, all of whom reside in Harris County, in the city of Houston, State of Texas, herein after called defendant; and for cause of action plaintiffs respectfully show to the court that they are each and all of them citizens of the United States and of the State of Texas and Democrats in political faith. That they reside in Harris County Texas and in the City limits of the city of Houston. That they have each and all qualified themselves under the laws of this state as qualified electors.

2. That on the 27th day of January, A. D. 1921 the said City Democratic Executive Committee of the City of Houston pro-
6 mulgated a rule and caused the same to be published in the columns of the Houston Post, a newspaper published in the city of Houston, Texas, that only white citizens would be permitted to vote in said city Democratic Primary Election, a copy of which is hereto attached and marked Exhibit A and made a part of these pleadings.

That the said Democratic Executive Committee adopted the said rule as a test of ones right to vote at said Primary Election. That said rule and test have been communicated to the election judges of the various voting boxes in the city of Houston, by the said Democratic Committee and the said judges have been required by the said committee to enforce the same.

4. That these relators called on the chairman of the Democratic Excutive Committee, James S. Griffith, in person and were told by him that only white people would be permitted to vote in said election.

5. Your relators would further sho to the court that this test adopted by said committee and now about to be enforced by the election judges of the city of Houston Texas, against these relators and their race, is an impossible test to them. That they are by nature colored people and have no control over their racial identity. That said rule and test is working an irreparable injury and hardship on these relators and their race in that there is no adequate legal remedy at hand to apply that will give relief. That the rule is hard, unfair, unjust and unlawful in this that it is not uniform among the voters and applies only to the colored race.

6. That the right to vote in this country is a continuing one and exist on other days than election days and that these defendants are threatening to destroy the right of suffrage which belongs to these relators and their race. That if said rule is upheld by the
7 courts in favor of said Democratic Committee, it can be applied by any political committee and will ultimately disfranchise these relators and their race in the state of Texas, all of which is in derogation of the constitution of Texas, her statutes and laws and the constitution of the United States.

7. Your relators would further show to the court that the said committee and the said judges of election are threatening to enforce said rule and test on the 9th day of February, 1921, in the city Democratic Primary Election to be held in the city of Houston, Texas on that date.

Wherefore, premises considered, plaintiffs pray the court that notice be given of the filing of this petition, as required by law and that defendants be required to appear and answer herein and for its most gracious writ of temporary injunction restraining said committee and judges from holding a strictly white man's primary Election on the ninth day of February A. D. 1921, and restraining them from in any manner debarring these relators of their race who are qualified under the laws of this state to vote, from voting in said city Democratic Primary Election on the ninth day of February A. D. 1921 and upon final hearing that said temporary injunction as herein prayed for be made perpetual and for such other and further relief in law and in equity, general and special as they may be justly entitled to and they will ever pray.

R. D. EVANS,
Atty. for Plaintiffs.

I, C. N. Love, do solomnly swear that I am one of the relators in the foregoing petition and that the facts therein stated and true and correct to the best of my knowledge and belief.

C. N. LOVE.

8 Subscribed and sworn to before me this 2 day of February A. D. 1921.

O. M. DUCLOS,
C. D. C. H. Co.,
By JAS. D. BRIGHTWELL,
Depy.

[SEAL]

EXHIBIT A.

Negroes Will Note Vote in Democratic Primary Feb. 9.

Decision is Reached by City Democratic Executive Committee.

Under a decision of the City Democratic Executive Committee as announced Wednesday by James S. Griffith, chairman, Negroes will not be allowed to vote in the coming Democratic City Primary. Such instructions will be issued to the election judges by the committee on the holding of the election, February 9.

This decision was reached after the receipt of an opinion of Murray B. Jones, council for the committee. Mr. Jones, in rendering his opinion stated the following as reasons for his decision:

The statutes of this state provide that in each incorporated city or town there shall be an executive committee for each political party consisting of the city chairman and four members. This executive committee may decide whether or not nomination shall be made by such political party in such city or town, and shall prescribe the method by which such nominations are made.

Powers of Political Party.

"In the absence of constitution are statutory restrictions upon their dutys and powers the duly existing authorities of a
9 political party, such as state, county, and city executive committees, in accordance with party usage, may make and enforce all reasonable regulations relating to nominations with such party."

"City ordinances provide that none but qualified voters of the city of Houston shall be allowed to vote in said election, and any person voting at said election shall also possess such additional qualifications as may be prescribed by the political party or organization holding said primary election."

"The fifteenth amendment to the constitution of the United States provides that the right of a citizen of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition — servitude. In my opinion, this relates only to general and special elections and does not limit the power or abridge the right of the executive committee of

a political party to establish its own rules and prescribe its own usuages.

Right to Prescribe Rules.

"In my opinion the city Democratic Executive Committee has the right, under the law, to prescribe its own rules and establish its own usuages. The question of colored people voting in the City Democratic Primary being political, not judicial, in its character, can properly be determined by your committee. Your Committee undoubtedly has the authority to act on this question and instruct the election judges in accordance with its action."

STATE OF TEXAS,
County of Harris:

Before me the undersigned authority on this day personally appeared W. L. Davis, known to me to be the person whose name is subscri'ed to a petition filed in the — district court of Harris County, the style of which is "C. N. Love et al. vs. James S. Griffit*y* et al. and upon his oath says that he is one of the relators in said petition and that the facts therein contained are true and correct to the best of his knowledge and belief.

W. L. DAVIS.

Subscribed and sworn to before me this 2 day of Feb. A. D. 1921.
[SEAL.]
O. M. DUCLOS,
D. C.
By A. J. ROBINSON,
Dpty.

STATE OF TEXAS,
County of Harris:

In the 11th District Court of Harris County, Texas, —— Term, 1921.

The foregoing petition for injunction being considered by me, it is ordered that the clerk of the District Court of Harris County, Texas, file and docket in said cause and issue notices to each of the defendants therein to be and appear before this court on Saturday morning February 5th, 1921, at 9 o'clock a. m. and show cause if any they have why injunction should not issue as prayed. Hearing upon affidavits and documentary evidence.

CHAS. E. ASHE,
Judge 11th Judicial Dist. of Texas.
O. M. DUCLOS,
Clerk District Court Harris County, Texas,
By A. J. ROBINSON,
Deputy.

Filed February 3, 1921.

Defts.' Answer.

Filed Feb. 5, 1921.

In the 11th District Court of Harris County, Texas, —— Term, A. D. 1921.

92765.

C. N. Love et al

vs.

Jas. S. Griffith et al.

To the Honorable Chas. E. Ashe, Judge:

Come now the Defendants and waive the issuance of citation and accept service herein.

Come now the Defendants in the above entitled and numbered cause and except and demur generally to Plaintiffs' original
11 petition and say the same is insufficient in law and states no cause of action. And of this they pray judgment of the Court that plaintiffs' suit be dismissed and that defendants go hence with their costs without day.

And further answering herein these defendants deny all and singular the allegations contained in plaintiff's petition and of this they put themselves upon the country.

Further answering herein, if same be necessary these defendants respectfully aver that the City Democratic Executive Committee has the right under the provisions of the Statutes of this State and the Ordinances of the City of Houston, Texas, to prescribe their own usages and establish their own rules. The Democratic organization as represented by the City Executive Committee, of which the Defendant, Jas. S. Griffith, is Chairman is a political and voluntary association for political purposes. Members of such parties may form them, reorganize them and dissolve them at their will. The legal question raised in Plaintiff's petition is one essentially political and not judicial in its character.

The Court should not undertake in this case to investigate the government, usages, rules and doctrines of this political organization and party.

These Defendants further aver that a denial by said Executive Committee of the right of negroes to vote in the coming Democratic Primary to be held on the 9th day February, A. D. 1921, is in no sence an abridgment or denial of the right of suffrage under the provisions of the Fifteenth Amendment to the Constitution of the United States. This Amendment relates to the general right of suffrage such as exists in general or special elections but does not in any sense control or limit the right and power of a party Execu-

tive Committee to prescribe, within statutory limitations, the
12 rules, regulations, usages and customs of said party.

The Statutes of this State (Article 3170) provide that in each incorporated town or city there shall be an Executive Committee for each political party consisting of the City Chairman and four members. This Executive Committee may decide whether or not nominations shall be made by such political party in such City or Town and shall prescribe the method by which such nominations are made.

The Ordinances of the City of Houston provide that where any political party or political organization whatsoever, entitled under the law to hold a primary election for the selection of condidates for Mayor and other offices, shall determine to hold such primary election, the same shall be held not later than a date at lease thirty days before the second Monday in April of the year in which the election is held. (Section 170.)

Said City Ordinances further provide, relative to the qualifications of voters in any primary election, that none but qualified voters of the City of Houston shall be allowed to vote in said election and any person voting in said election shall also possess such additional qualifications as may be prescribed by the political party or organization holding said primary election.

Wherefore premises considered, these Defendants pray the Court that Plaintiffs' petition be dismissed, that no writ of injunction or restraining order be issued against these Defendants or any of them, that Plaintiffs take nothing by their suit and Defendants recover their costs, and for such other and further relief, both in law and in equity, general and special as they may be justly entitled to receive.

MURRAY B. JONES,
Attorney for Defendants.

13 STATE OF TEXAS,
County of Harris:

I, Jas. S. Griffith, do solemnly swear that I am one of the defendants herein and that the facts stated in this answer are true and correct according to my best knowledge and belief.

JAS. S. GRIFFITH.

Sworn to and subscribed before me at Houston, Texas, this the 4th day of February A. D. 1921.

[SEAL.] L. A. HAYS,
Notary Public, Harris County, Texas.

Filed February 5, 1921.

O. M. DUCLOS,
Clerk District Court, Harris County, Texas,
By JAS. D. BRIGHTWELL,
Depy.

Judgment.

Recorded, Vol. 27, Page 18.

No. 92675.

C. L. LOVE et al.

vs.

JAMES S. GRIFFITH et al.

On this day in the above entitled and numbered cause wherein C. N. Love, et al. are Plaintiffs and Jas. S. Griffith, et al., are Defendants, came the parties by their attorneys, and then came on to be heard Defendants' demurrer to Plaintiffs' original petition filed herein. And the arguments of counsel thereon having been heard, it is the opinion of the Court that the law is for the Defendants.

And Plaintiffs having failed and declined to amend their original petition, it is, therefore, considered, ordered, adjudged and decreed by the Court that said cause be dismissed and the Defendants, Jas. S. Griffith, et al. go hence without day and that they recover of the plaintiffs, C. N. Love, W. L. Davis, J. B. Grigsby, W. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, their costs in this behalf expended for which they may have their execution; to all
14 of which Plaintiffs except and give notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston.

Recorded Vol. 27, page 16, Minutes District Court, Harris County, Texas, for the 11th Judicial District.

Plaintiffs' Appeal Bond to Court of Civil Appeals.

Filed Feb. 15, 1921.

In the 11th District Court, Harris County, Texas.

No. 92675.

C. N. LOVE et al.

vs.

JAMES S. GRIFFITH et al.

Whereas in the above styled and numbered cause, pending in the Eleventh District Court of Harris County, and at a regular term of said Court, to wit, on the 7th day of February, A. D. 1921, the said James S. Griffith et al. recovered judgment against the said C. N. Love et al. by having sustained by the court their general demurrer to the petition of the said C. N. Love et al. in which it was

sought to restrain the said James S. Griffith et al. from preventing colored voters who were otherwise qualified to participate in the City Primaries for the Democratic party in the City of Houston, Texas, to be held on the 9th day of February, and also obtaining judgment for all costs of court, from which judgment the said C. N. Love et al. have taken an appeal to the Court of Civil Appeal for the First Supreme Judicial District at Galveston, in the County of Galveston:

Now therefore, we, C. N. Love, —— ——, as principals, and —— —— and —— ——, as sureties acknowledge ourselves bound to pay to the said James S. Griffith et al., the sum of $200.00 *Dollars,* conditioned that the said C. N. Love et al., appellants, shall prosecute their appeal with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in
15 the Court of Civil Appeals and the Supreme Court.

Witness our hands this the — day of February, A. D. 1921.

C. N. LOVE.
W. L. DAVIS.
J. B. GRIGSBY.
WM. NICKERSON, JR.
N. DUDLEY, JR.

I have fixed the probable amount of costs of this suit in the Court of Civil Appeals, the Supreme Court and the Court below at $100.00 *Dollars,* and approve the foregoing bond, this the 15 day of February, A. D. 1921.

O. M. DUCLOS,
Clerk of the District Court, Harris County, Texas,
By C. J. SCHWEIKART,
Deputy.

Filed Feby. 15, 1921.

O. M. DUCLOS,
Clerk District Court, Harris County, Texas,
By A. J. SCHWEIKART,
Deputy.

16 THE STATE OF TEXAS:

No. 92765.

C. N. LOVE et al., Plaintiff-,

vs.

JAS. S. GRIFFITH et al., Defendant-.

Clerk's Cost Bill.

To the Officers of Court, Dr.

Clerk's Cost.

Docketing	.20
Filing	.30
Entering Appearance	.30
Entering Judgments	1.00
Swearing Witness	.40
Affidavits	1.50
Notice	31.50
Approving Bond	1.50
Transcript	7.50
Filing Brief and Certificate	.90
Taxing Costs	.25
Total	$45.35

Sheriff's Costs.

Jury Fees	.50
Total	$.50
Stenograph-'s Fee	3.00

Recapitulation.

Clerk	$45.35
Sheriff	.50
Stenographer's Fee	3.00
Total	48.85

STATE OF TEXAS,
Harris County:

I, O. M. Duclos, Clerk District Court in and for Harris County, do hereby certify that the above is a Correct Bill of all Costs incurred in the above numbered and entitled suit up to this date.

In witness whereof, I hereunto affix my hand and seal of the Court at office in Houston, this 16th day of February, 1921.

[SEAL.] (Signed) O. M. DUCLOS,
Clerk District Court, Harris Co., Tex.,
(Signed) By A. J. ROBINSON,
Dpy.

17 *Clerk's Certificate.*

THE STATE OF TEXAS,
County of Harris:

I, O. M. Duclos, Clerk of the District Court of Harris County, Texas, do hereby certify that the above and foregoing 15 pages is a true and correct transcript of all proceedings had in Cause No. 92765 entitled C. N. Love, et al. vs. James S. Griffith, et al. as the same appear on file and of record in my office.

Given under my hand and seal of said Court, at office in Houston, Harris County, Texas, this the 18th day of February, 1921.

[SEAL.] (Signed) O. M. DUCLOS,
Clerk District Court, Harris Co., Tex.,
(Signed) By A. J. ROBINSON,
Dpy.

18 *Judgment Court of Civil Appeals.*

8091.

C. N. LOVE et al.

vs.

JAS. S. GRIFFITH et al.

Appeal from District Court of Harris County.

Opinion Delivered by Chief Justice Pleasants.

This cause came on to be heard on the transcript of the record and the same being inspected, because it is the opinion of this Court that the subject matter of this suit has ceased to exist, it is therefore ordered, adjudged and decreed that this cause be and the same hereby is dismissed. It is further ordered that the appellants, C. N. Love, W. L. Davis, J. B. Grigsby, W. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, pay all costs in this cause incurred, and this decision be certified below for observance.

(Recorded in Minute Book No. 9, Page 311, November 23, 1921.)

19 *Opinion Court of Civil Appeals.*

No. 8091.

C. N. LOVE et al., Appellants,

vs.

JAMES S. GRIFFITH et al., Appellees.

Appeal from the District Court of Harris County.

This appeal is from a judgment of the court below sustaining a general demurrer to the plaintiffs' petition in a suit brought by appellants against the appellees.

Appellants, C. N. Love and five others, all of whom are colored citizens of the City of Houston, and qualified voters of the city under the constitution and laws of this state, brought this suit against the appellees, the Democratic Executive Committee, and the election Judges for the city Democratic primary election at all of the voting boxes of the city, to restrain the defendants from denying plaintiffs the right to vote in a Democratic primary election called to be held in said city on February 9, 1921, for the purpose of nominating Democratic candidates for election to the offices of mayor and members of the city council, or board of city commissioners.

The petition alleges in substance that the Democratic Executive Committee had passed a resolution or adopted a rule restricting participation in said primary election to white voters and directing the election Judges to deny to any colored voter the right to vote in said election. This resolution or rule of the committee is attacked on the ground that it deprives plaintiffs of rights guaranteed to them under the Federal and State constitutions, and the laws of this State, and the enforcement of the rule is sought to be enjoined.

20 Upon a hearing of the application for temporary injunction on February 5, 1921, the court below sustained a general demurrer to plaintiffs' petition, and plaintiffs declining to amend, the suit was dismissed.

It is apparent from this statement of the record that the primary purpose of the suit was to secure to plaintiffs the right to vote in the city Democratic primary election held in the City of Houston on February 9, 1921, and that that election has long since been held. It is now impossible to grant plaintiffs the relief sought by their petition, the subject matter of the suit having in effect ceased to exist.

It follows that the question of the constitutionality of the statute under which the executive committee acted in promulgating the rule complained of by plaintiffs is now a moot question in so far as it affects the cause of action which is the basis of this suit.

The constitutionality of a statute will not be inquired into by the courts unless the petition by which the question is presented shows that the statute affects some concrete right of the complainants. The rule of the executive committee applied only to the primary election

of February 9, 1921, and we cannot assume either that the next democratic primary election will be called under the same rule or instructions of the committee, or that appellants when such election may be called will be qualified voters in that city and desire to vote in such election.

It is well settled by our decisions that appellate courts will not entertain jurisdiction to hear and determine questions presented by an appeal when the cause of action upon which the suit is based has ceased to exist. S. W. Telephone Co. v. Galveston County, 59
21 S. W. 589; Robinson v. State, 87 Texas, 565, 29 S. W. 649; Lacoste v. Duffy, 49 Texas, 768; Gordon v. State, 47 Texas, 208; McWhorter v. Northcutt (Tex. Sup.) 58 S. W. 720; Bolton v. City of San Antonio, 4 Tex. Civ. App. 174, 23 S. W. 279.

The only material question now left in the case is the question of costs and that question alone is not sufficient to require this court to entertain the appeal.

For the reasons stated we are of opinion that this appeal should be dismissed, and it has been so ordered.

Dismissed.

(Signed) R. A. PLEASANTS,
Chief Justice.

Filed in Court Civil Appeals Dec. 21, 1921.
H. L. GARRETT,
Clerk.

22 *Appellants' Motion for Rehearing.*

In the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston.

#8091.

C. N. LOVE et al., Appellants,

vs.

JAS. S. GRIFFITH et al., Appellees.

Now comes the appellants, C. N. Love, et al., in the above styled and numbered cause, and moves the court to set aside the judgment heretofore rendered in this cause, affirming the judgment of the court below and dismissing this cause, for the following reasons:

First. Because the court erred in dismissing the appeal in this cause for the reason that the record on appeal showed that a question of law was presented to the court by the record of the court below. That the questions of law presented to the court involved the constitution of the State of Texas and that of the United States. That the Statute under which the committee acted was in conflict with the constitution of Texas Art. 6 Sec. 2. That the said Statute under which the committee acted is by their action made to conflict with

the constitution of the United States art. 15 of the amendments thereto. That these questions of law are sufficiently presented in the record of said cause to present clearly a legal question and although the particular relief prayed for had passed and failed, the court should retain jurisdiction of this cause to construe the law and settle the legal question, thereby preventing a multiplicity of suits.

Second. Because the court erred in dismissing the case because it presented a legal rather than a political question. We think the question presented by the pleadings in the court below was a legal question and not a political question as is apparent on the face of the record. And because made so by a manifest Statute we think
23 the court was within its jurisdiction to consider same and should have retained jurisdiction for that purpose.

Authorities.

In support of the first proposition we present the following authorities:

Fetter on equity, page 14 citing Gleaton v. Gibson, 7 S. E. 833; Case v. Minot 33 N. E. 700; Holland v. Anderson 38 Mo. 55; Combs v. Scott 45 N. W. 532.

"The test of the jurisdiction of a court of equity is whether facts exist at the time of the commencement of the action sufficient to confer jurisdiction on the court. If plaintiff is then entitled to the said aid of equity the jurisdiction will not be defeated by subsequent events which render equitable relief unnecessary or improper. This rule is applicable not only where the relief sought is prevented by act of the defendant but also where the change of circumstances arises from the lapse of time rendering the specific relief unsuitable or in-quitable." 21 Corpus Juris page 145 and cases cited under notes 86, 87, 88, 89.

In support of the second proposition, we cite the following authorities: Ashford vs. Goodwin, 103 Tex. 491; Wapples vs. Gilmore 108 Tex. 167; Anderson vs. Ashe 62 Tex. C. A. 262. These cases determined the legal status of a primary election in Texas and declare it is an election to all intense and purposes the same as any other election ordered by Statute and regulated by the same.

"The right to vote is a continuing right and exist on other days than election days" 15 Cyc. 447 note 7.

Under the above citation of authorities we think that the court is in error to dismiss our cause.

Appellants represent to the court that Murray B. Jones who resides in Houston, Harris County Texas is the attorney of record for the appellees.

24 Wherefore appellants pray that notice according to law be given of their application, and that on hearing hereof, the judgment dismissing the cause heretofore rendered herein be set aside and a rehearing granted; and that further proceeding be had herein as prayed for in appellants' original brief.

(Signed) R. D. EVANS,
Atty. for Appellants.

Filed in Court Civil Appeals Dec. 6, 1921.
H. L. GARRETT,
Clerk.

25 *Appellants' Amended Motion for Rehearing.*

In the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston.

#8091.

C. N. LOVE et al., Appellants,

vs.

JAS. F. GRIFFITH et al., Appell*ants.*

Now comes the appellants, C. N. Love et al. leave of court first had and obtained and filed *his* first amended motion, and moves the court to set aside the judgment heretofore rendered in this cause affirming the judgment of the court below and dismissing this cause for the following reasons:

1. Because the court er-ed in dismissing the appeal in this cause. The record on appeal showed that a question of law was presented to the court below and brought to this court for construction. That said record showed upon its face that the constitution of the United States and of the State of Texas were alleg*d*ed to have been violated by the ruling promulgated by the said executive committee as well as the election law of the State itself.

It is a well settled question that equity will retain jurisdiction where a question of law arises though incidentally so, even where the specific act enjoined had passed and was rendered impossible by lapse of time and circumstances. In support of this proposition we quote the following authority: Fetter on equity page 14 citing Gleaton v. Gibson 7 S. E. 833; Case v. Minot 33 N. E. 700; Holland v. Anderson 38 Mo. 55; Combs v. Scott 45 N. W. 532.

In further support of this contention we submit the following from the 21 Corpus Juris page 145; "the test of the jurisdiction of a court of equity is whether facts exist at the time of the commencement of the action sufficient to confer jurisdiction on the court. If plaintiff is then entitled to the aid of equity the jurisdiction will not be defeated by subsequent events which render equitable re-
26 lief unnecessary or improper. Mutual L. Ins. Co. v. Blair 130 Fed. 971; Everitt v. Taylor 127 Ga. 103; Barz v. Sawyer, 159 Iowa 481; Rosen v. Mayer 224 Mass. 449 Steward v. Joyce 201 Mass. 301. Grubb v. Sharkey 90 Va. 831. Morley v. White LR. 8 C. H. 731.

Where equity fails. Say the same authority "This rule is applicable not only where the relief sought was prevented by acts of the defendant, but also where the change of circumstances arises from lapse of time rendering the specific relief unsuitable or inequitable.

Goldschmidt Thermit Co. v. Primos Chemical Co. 216 Fed. 382. Rosen v. Mayer 224 Mass. 494, Beedle v. Bennett 122 U. S. 71. Clark v. Wooster 119 U. S. 322. Cartwright v. Southern Pac. Co. 206 Fed. 234; Hohorst v. Howard, 37 Fed. 97; Kirk v. Du Bois 28 Fed. 460. Everett v. Tabor 127 Ga. 103 Martin v. Jamison 39 Ill. A. 248; Miller v. Gates 62 Ind. A 37. Barz v. Sawyer 159 Iowa 481, Crawford v. Summers 3 J. J. Marsh 300; Works v. Canton 171 Mass. 414 Brande v. Grace 154 Mass. 210; Woodbury v. Marblehead Water Co. 145 Mass. 509; Milkman v. Ordway 106 Mass. 232; Michigan Iron etc. Co. v. Nester 147 Mich.; Miller v. Edison Electric Illum. Co. 184 N. Y. 17; McNulty vs. Mt. Morris Electric Light Co. 172 N. Y. 410; Allen v. N. Y. etc. Railroad Co. 144 N. Y. 174; Valentine v. Richardt, 126 N. Y. 272; Raferty v. World Film Corp. 180 App. Div. 475; Ogden v. N. Y. 141 App. Div. 578; McDonald — N. Y. 113 App. Div. 625; Tucker v. Edison Electric Illum. Co. 100 App. Div. 407; Domschke v. Metropolitan El. R. Co. 74 Hun. 422; Moon v. National Wall-Plaster Co. 31 Misc. 631; Smith v. Ingersol-Sergeant Rock Drill Co. 7 Misc. 374; Clarke v. Burrough Asphalt Co., 157 N. Y. S. 581; Hawley v. Cramer 4 Cow. 717; King v. Baldwin 17 Johns., 384; Hamlin v. Hamlin 56 N. C. 191; Connemaugh Gas Co. v. Jackson Farm Gas Co. 186 Pa. 443; Frazier v. Mackelenaghan 21 S. C. Eq. 227; Grubb v. Starkey 90 Va. 831; Walters v.
27 Farmers Bank 76 Va. 12; Robinson v. Braiden 44 W. Va. 183; Rock County v. Weirick 143 Wis. 500; Stevens v. Coates 101 Wis. 569; Bigelow v. Washburn 98 Wis. 553; Cole v. Getzinger 96 Wis. 559.

On page 146, 21 C. J., we read: "Related to but distinct from the subject of awarding legal relief in an equity suit is that of incidentally deciding questions of law and adjudicating legal rights for the purpose of awarding equitable relief consequent upon such determination." Note 96 same page is cited the following: In the United States the court in the equity suit itself will determine any legal question incidentally arising." Wehner v. Bauer 160 Fed. 240; India Rubber Co. v. Consolidated Rubber Tire Co. 117 Fed. 354; Evins v. Cawthorn 132 Ala. 184; Constas v. Greforis 192 Ill. A. 376; Leigh v. National Hollow Break Bean Co. 104 Ill. A. 438; Vicksburg etc. Tel. Co. v. Citizens Tel. Co. 79 Miss. 341; National Docks etc. R. Co. v. Pennsylvania R. Co. 54 N. J. Eq.

The main equity prayed for in this case we don't consider has entirely failed or passed for the following reasons: The right to vote at such election was clearly a legal right for the enforcement of which equity exists. The rule thus enforced has long been indulged in by election officers in the City of Houston and there is no indication that the rule thus laid down by the said committee will ever be repealed. That being the case it will be a constant bar to the exercise of the right to vote, by the relators or appellants.

From 20 Corpus Juris, We quote the following: "The right to vote is a continuing right and exists on other days then election days, and this offense is committed by giving out threats that keep lawful voters away from the poles." 20 C. J. 284, N. 5 Cit., U. S. v. Crosby 25 Fed. cas. #14893, 1 Hughes 448.

In our own State in the case of Waples v. Gilmore 108 Texas 176, the court retain jurisdiction of this case which was filed
28 to enjoin the executive committee of the State Dem. Com. from nominating a candidate at the July Primaries and that he might be permitted to run at said Primaries, until the 4 day of November the same year and said in the opinion that it was for the purpose of construing the Primary election law.

In Ashford v. Goodwin the court there construed the legal question as to the primary law though the question of the law was only incidentally involved. 103 Texas 491.

In view of the above citation of authority we think that the court is in error to dismiss our cause. That Murray B. Jones who resides in Houston Harris County Texas is the Attorney of record for the Appellees.

Wherefore Appel-ante pray that notice according to law be given of their application and that on rehearing hereof, the judgment dismissing the cause heretofore rendered, be set aside and a rehearing granted and that the relief prayed for in Appel-ance original brief be granted.

(Signed) R. D. EVANS,
Atty. for Appel-ants.

Filed In Court of Civil Appeals Jany. 4, 1922.
H. L. GARRETT,
Clerk.

Order Overruling Motion for Rehearing.

7849/8091.

C. N. LOVE et al.

vs.

JAS. S. GRIFFITH et al.

From Harris.

It is ordered that appellants' motion for rehearing be refused.

Entered in Minute Book No. 9, P. 321, January 12, 1922.

29 *Petition for Writ of Error.*

C. N. LOVE et al.

vs.

JAS. S. GRIFFITH et al.

Petition for Writ of Error from the Supreme Court of the United States.

To Any Justice of the Supreme Court of the United States or to the Chief Justice of the Court of Civil Appeals for the First Supreme Judicial District of Texas:

Now comes C. N. Love, W. L. Davis, J. B. Grisgby, William Nickerson, Jr., Newman Dudley, Jr. and Perry Mack Petitioners, and respectfully show as follows:

That on March the 1st A. D. 1922, that the Supreme Court of Texas in the above entitled and numbered cause then pending in that Court upon a petition for Writ of Error to the Court of Civil Appeals for the First Supreme Judicial District of Texas, in which C. N. Love, W. L. Davis, J. B. Grisgby, William Nickerson, Jr., Newman Dudley, Jr. and Perry Mack were plaintiffs in error, and Jas. S. Griffith, Alvin D. Moody, Robert Ring, Jas. E. Donavan, Fred Dyer and G. W. Stacy were defendants in error, denied said application for writ of error and dismissed said cause for want of jurisdiction. That said Court wrote no opinion in the case.

That on the — day of November A. D. 1921, the Court of Civil Appeals for the First Supreme Judicial District of Texas, in which the above entitled and numbered cause was pending on appeal from the 11th District Court of Harris County, Texas, rendered a judgment dismissing said cause for want of jurisdiction. That the judgment rendered was against the Appellants in error who are the petitioners herein.

The Supreme Court of Texas is the Highest Court of Texas in which a decision in this suit could be had; and said Supreme Court having dismissed the suit without a decision; the Court of
30 Civil Appeals for the First Supreme Judicial District of Texas, having final custody of the records becomes the proper Court to which a writ of error from the Supreme Court of the United States should be issued.

Petitioners were, and are aggrived by the judgment of November — A. D. 1921, and by the judgment of — January A. D. 1922, overruling the Motion for Rehearing; and by the proceedings had prior thereto. Certain errors were committed to the prejudice of the Petitioners, in that there was drawn in question the validity of a Statute of Texas, as construed, an authority under same, on the grounds of their repugnance to the Constitution and Laws of the United States, and the decision was in favor of their validity as construed, and in that, there was drawn in question the validity of an authority exer-

cised under the Constitution of the United States, and the decision was against its validity; all as will more fully appear, by reference to the assignments of errors filed herewith and to be taken as part of this petition. That all exceptions to adverse rulings of the District Court and the said Court of Civil Appeals according to the practice of Texas, have been taken at the proper time, as will more fully appear in the records of this cause; and your petitioners desire to avail themselves of the law and practice, in such cases made and provided, by writ of error from the Supreme Court of the United States to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, Texas.

Wherefore Petitioners pray that the writ of error may be allowed and issued to the Court of Civil Appeals for the First Supreme Judicial District, at Galveston, Texas, for the removal of this cause to the Supreme Court of The United States, to the end that
31 the errors of the Court of Civil Appeals for the First Supreme Judicial District of Texas, dismissing said appeal may be duly corrected and full and speedy justice be done to the parties; and that the transcript of the record proceedings and papers in this cause duly authenticated, may be sent to the Supreme Court of the United States; and that a bond for costs be approved as provided by law, and that all such other relief, as may be due be granted Petitioners.

C. N. LOVE,
W. L. DAVIS,
J. B. GRISGBY,
WILLIAM NICKERSON, JR.
NEWMAN DUDLEY, JR.,
PERRY MACK,
By R. D. EVANS,
Their Atty.

(Signed) R. D. EVANS.

Allowance of Writ of Error.

The foregoing petition for a writ of error with the accompanying assignments of errors, having been presented to me and being considered, and being desirous of giving the Petitioners an opportunity to present in the Supreme Court of the United States, the questions presented by the record; it is ordered and decreed, that said writ of error is allowed, on the giving by Petitioners of a bond in the amount of ($500) Five Hundred Dollars.

I have identified the assignment of errors presented with the above petition by my signature. Let it be filed with this petition.

(Signed) R. A. PLEASANTS,
Chief Justice of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

Filed in Court of Civil Appeals May 26, 1922.
H. L. GARRETT,
Clerk.

32 *Assignment of Error.*

C. N. Love et al.

vs.

Jas. S. Griffeth et al.

Assignment of Errors.

This is the case styled, in the Court of Civil Appeals for the First Supreme Judicial District of Texas, C. N. Love et al., Appellants vs. Jas. S. Griffeth, et al., Appellees, #8091.

Now come the plaintiffs in error, C. N. Love, et al., Petitioners for a writ of error, and respectfully show that in the record, proceedings, decision and final judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas, in the above entitled case, there is manifest error in this:

First. The said Court of Civil Appeals erred in dismissing this case, and holding that the equity of the original bill in the trial Court had failed, because the election had passed. The record will show that the bill was filed in the Trial Court in time, and refused for want of jurisdiction.

Second. The said Court of Civil Appeals erred in refusing to retain the case and adjudicate the questions of law raised by the bill in the Trial Court, for the reason that there were directly pleaded in the Trial Court, The Constitution of Texas, The Statute of Texas and the Constitution of the United States.

Third. The said Court of Civil Appeals erred in not holding that the Appellants had the right to vote in said Primary Election, for the reason that said Court of Civil Appeals had previously held
33 the said Primary Election in Texas to be an Election to all intents and purposes the same as any other Statutory Election; because the Constitution of the State of Texas, guarantees said right to said Appellants as appears in the record in this case.

Fourth. The said Court of Civil Appeals erred in not sustaining the bill of these Petitioners then Appellants in that Court, because the Fifteenth Amendment to the Constitution of the United States, prohibits any such discrimination as was complained of in the original bill in the Trial Court.

Fifth. The said Court of Civil Appeals erred in overruling Motion for Rehearing, on the — day of January A. D. 1922.

Respectfully,

C. N. LOVE,
W. L. DAVIS,
J. B. GRIGSBY,
NEWMAN DUDLEY, JR.,
W. M. NICKERSON, JR.,
PERRY MACK,
By R. D. EVANS.

(Signed) R. D. EVANS,
Their Attorney.

Identification of Assignment of Error.

The above is a correct copy of the assignments of error presented in this court.

(Signed) R. A. PLEASANTS,
Chief Justice Court of Civil Appeals, First Supreme Judicial District of Texas.

Filed in Court of Civil Appeals May 26, 1922.
H. L. GARRETT,
Clerk.

34 *Bond on Writ of Error.*

Know all men by these presents,

That we, C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., & Perry Mack, as principals and —— ——, as sureties, are held and firmly bound unto Jas. S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan & Fred Dyer, & their associates in this suit in the full and just sum of five hundred dollars, to be paid to the said Jas. S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan and Fred Dyer, and their associates in this suit, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 8th day of June in the year of our Lord one thousand nine hundred and twenty-two.

Whereas, lately at a Hearing in the Court of Civil Appeals for the first Supreme Judicial District of Texas, in a suit pending in said Court, between C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, as appellants and Jas S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan, and Fred Dyer, and their associates in this suit, appellees, a Judgment was rendered against the said C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, and the said C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, having obtained a writ of error and filed a copy thereof in the Clerk's Office

of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Jas. S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan and Fred Dyer, and the other de-
35 fendants therein, citing and admonishing them to be and appear before the Supreme Court of the United States, to be holden at Washington in the District of Columbia, and a session thereof within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the said C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, shall prosecute their writ to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of:

(Signed)

C. N. LOVE. [SEAL.]
PERRY MACK. [SEAL.]
J. B. GRIGSBY. [SEAL.]
N. DUDLEY, JR. [SEAL.]
WM. NICKERSON, JR. [SEAL.]
W. L. DAVIS. [SEAL.]
R. F. FERRILL,
JAMES D. RYAN,
Sureties.

Approved by

(Signed) R. A. PLEASANTS,
Chief Justice Court of Civil Appeals,
First Supreme Judicial District of Texas.

Oath to be Taken by Surety.

I, J. D. Ryan do swear that I am worth, in my own right at least the sum of Five Hundred Dollars, after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; that I reside in Harris County, State of Texas, and have property in said State liable to execution worth Eight Thousand ($8,000.00) Dollars or more.

(Signed)

J. D. RYAN,
Surety.

36 Sworn to and Subscribed before me, this the 12th day of June, A. D. 1922.

As witness my hand and official seal.

(Signed)
[SEAL.]

G. O. BURGESS,
Notary Public, Harris Co., Texas.

Oath to be Taken by Surety.

I, R. F. Ferrell do swear that I am worth, in my own right, at least the sum of Five Hundred Dolars, after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; that I reside in Harris County, State of Texas, and have property in said State liable to execution worth Five Thousand ($5,000.00) Dollars or more.

(Signed) R. F. FERRELL,
Surety.

Sworn to and subscribed before me, this the 12th day of June, A. D. 1922.

As witness my hand and official seal.

(Signed) G. O. BURGESS,
[SEAL.] *Notary Public, Harris Co., Texas.*

STATE OF TEXAS,
County of Harris:

I, O. M. Duclos, Clerk of the District Court, in and for said County of Harris, do hereby certify that R. F. Ferrell and J. D. Ryan, whose names appear signed to the annexed bond are in my opinion good and ample security for the amount therein specified, and that if said bond was offered to me for approval, the same would be accepted and approved.

To certify which, I hereunto set my hand and official seal this the 12th day of June, A. D. 1922.

37 (Signed) O. M. DUCLOS,
[SEAL.] *Clk. Dist. Ct., Harris County, Texas,*
(Signed) By JOSEPH LEHAN,
Dpty.

Filed in Court Civil Appeals June 13th, 1922.
H. L. GARRETT,
Clerk.

38 *Prayer for Reversal.*

C. N. LOVE et al., Appellants,

vs.

JAS. S. GRIFFETH et al., Appellees.

Prayer for Reversal.

Now come C. N. Love, W. L. Davis, J. B. Grigsby, Newman Dudley, Jr., W. M. Nickerson, Jr. and Perry Mack, plaintiffs in error, and pray for reversal of the judgment and decree of the Court of Civil

Appeals for First Supreme Judicial District of Texas rendered November the 4th A. D. 1921, and in overruling the Motion of Petitioners for Rehearing January —, A. D. 1922, leaving the judgment of the Trial Court undisturbed; these Petitioners having applied for an- obtained a writ of error to review an- correct said judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

They pray that said judgment be reversed and rendered.

C. N. LOVE,
W. L. DAVIS,
J. B. GRIGSBY,
NEWMAN DUDLEY, JR.,
W. M. NICKERSON, JR.,
PERRY MACK,
By R. D. EVANS.

(Signed) R. D. EVANS,
Their Atty.

Filed in Court Civil Appeals May 26, 1922.
H. L. GARRETT,
Clerk.

39 *Cost Bill in Court of Civil Appeals.*

Filing Record	.50
Docketing Cause	.50
Appearances	.50
Filing Briefs	.50
Filing and entering motion for rehearing	.35
" " " motion for findings of fact, etc.	.35
Orders	3.00
Notices	3.50
Precepts	2.00
Filing extra papers	1.00
Making certified copy of motions	3.05
Continuance	.20
Judgment	1.00
Filing opinion	.10
Taxing costs	.50
Certified Copy Bill of costs	.75
Recording	1.50
Clerk's costs Austin State Supreme Court	8.00
Sheriff's fees	1.80
Entering orders made by State Supreme Court	.50
Transcript on application to State Supreme Court	1.50
Express Charges	.60
Transcript to United States Supreme Court	15.00
	$46.70
Amount paid by R. D. Evans—$31.70	31.70
Balance due	$15.00

(This bill does not include any district court costs. See page 16 of this record for district court cost bill.)

40 I, H. L. Garrett, Clerk of the Court of Civil Appeals, First Supreme Judicial District of the State of Texas, at Galveston, Texas, do hereby certify that the preceding 39 pages contain a full, true and correct copy of the transcript from the district court of Harris County and of all proceedings had in the Court of Civil Appeals, First Supreme Judicial District of the State of Texas in cause numbered and styled in said Court—No. 8091, C. N. Love, et al. vs. James S. Griffith, et al., appealed to said Court of Civil Appeal from the 11 Judicial District Court in and for Harris County, Texas.

And I further certify that I have attached to this record, at the request of attorney for the plaintiffs in error, the original writ of error and the original citation in error, filed in this Court on June 13, 1922, and prayer for reversal, filed in this court May 26, 1922 in said cause.

[Seal of Court of Civil Appeals of the State of Texas.]

H. L. GARRETT,
Clerk Court Civil Appeals, First Supreme Judicial District of the State of Texas, at Galveston, Texas.

41 *Prayer for Reversal.*

Filed in Court Civil Appeals May 26, 1922. H. L. Garrett, Clerk.

C. N. Love et al., Appellants,

vs.

Jas. S. Griffeth et al., Appellees.

Now come C. N. Love, W. L. Davis, J. B. Grigsby, Newman Dudley, Jr., W. M. Nickerson, Jr and Perry Mack, Plaintiffs in Error, and pray for reversal of the judgment and decree of the Court of Civil Appeals for the First Supreme Judicial District of Texas rendered November the 4th, A. D. 1921, and in overruling the Motion of Petitioners for Rehearing January —, A. D. 1922, leaving the judgment of the Trial Court undisturbed; These Petitioners having applied for an- obtained a writ of error to review an- correct said judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

They pray that said judgment be reversed and rendered.

C. N. LOVE,
W. L. DAVIS,
J. B. GRIGSBY,
NEWMAN DUDLEY, Jr.,
W. M. NICKERSON, Jr.,
PERRY MACK,
By R. D. EVANS.
R. D. EVANS, *Their Atty.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Court of Civil Appeals for the First Supreme Judicial District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Civil Appeals for the First Supreme Judicial District of Texas before you, or some of you, between C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson Jr., Newman Dudley Jr., and Perry Mack, appellants in error; and James S. Griffith, Alvin D. Moody, Robert Ring, Jas. E. Donovan, Fredy Dyer and their associates in this case, appellees in error, wherein was drawn in question the validity of an authority exercised under a Statute of the State of Texas, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of their validity as exercised, a manifest error hath happened, to the great damage of the said C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley Jr., and Perry Mack, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, according to law, together with this writ, within 30 days from the date hereof, in the said Supreme Court of the United States, *United States* to be then and there held, and the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States *United States*, the 13th day of June, in the year of our Lord one thousand nine hundred and Twenty-two.

[Seal of United States District Court, Southern District of Texas.]

L. C. MASTERSON,
Clerk of the U. S. Dist. Court,
Southern Dist. of Texas.

Allowed by,
R. A. PLEASANTS,
Chief Justice of the Court of Civil Appeals
for the First Supreme Judicial District
of Texas.

[Endorsed:] No. —, — Docket. United States Supreme Court, at ——. C. N. Love et al., vs. Jas S. Griffith, et al. Writ of Error. Filed in Court Civil Appeals, Jun. 13, 1922. H. L. Garrett, Clerk.

43 UNITED STATES OF AMERICA, *ss:*

To President of the United States to Jas. S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan, Fred. Dyer, and their associates in this case, and Murray B. Jones, their solicitor of record, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court, according to law, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the Court of Civil Appeals for the first Supreme Judicial District of Texas, wherein C. N. Love, W. L. Davis, J. B. Grigsby, Wm. Nickerson, Jr., Newman Dudley, Jr., and Perry Mack, are Appellants in error, and Jas. S. Griffith, Alvin D. Moody, Robt. Ring, Jas. E. Donovan, Fred Dyer and their associates in this case, are Appellees in error to show cause, if any there be, why the decree in said cause above mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 8th day of June A. D. 1922, and of the independence of the United States the 146th year.

R. A. PLEASANTS,
Chief Justice of the Court of Civil Appeals for the first Supreme Judicial — of Texas.

Attested:
H. L. GARRETT,
Clerk of the Court of Civil Appeals for the First Supreme Judicial District of Texas.

44 I, Murray B. Jones Attorney for the Defendants in error mentioned in the foregoing citation signed by Chief Justice Pleasants, due hereby waive the issuance of said citation service and return and hereby accept and appear in said cause of which the above is the original and do hereby waive the issuance and service of such citation upon the defendants in error or upon us. We also accept notice of the lodging with the clerk of the Court of Civil Appeals for the first Supreme Judicial District of Texas, of the writ of error in this case and a copy hereof on our behalf and do waive any further service thereof.

MURRAY B. JONES,
Attorney for Defendants in Error Above Referred to.

[Endorsed:] United States Supreme Court. No. —, — Docket. C. N. Love et al., vs. Jas. S. Griffith et al. Citation. Filed in Court Civil Appeals, Jun. 13, 1922. H. L. Garrett, Clerk.

Endorsed on cover: File No. 28,994. Texas Court Civil Appeals, First Supreme Judicial District. Term No. 444. C. N. Love, W. L. Davis, J. B. Grigsby, et al., plaintiffs in error, vs. James S. Griffith, Alvin D. Moody, Robert Ring, et al. Filed June 23rd, 1922. File No. 28,994.

NO. 12

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1924

C. N. LOVE, ET AL.,
Plaintiffs in Error

vs.

JAS. S. GRIFFITH, ET AL.,
Defendants in Error

Petition for Writ of Error to the Court of Civil Appeals for The First Supreme Judicial District of Texas

and

BRIEF FOR PLAINTIFFS IN ERROR

R. D. EVANS,
Attorney for Plaintiffs in Error

Smith Printing Co., Waco, Texas

NO. 12

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1924

C. N. LOVE, ET AL,
Plaintiffs in Error

vs.

JAS. S. GRIFFITH, ET AL,
Defendants in Error

Appealed From the Court of Civil Appeals for the
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS
At Galveston, Texas

STATEMENT OF THE NATURE AND RESULT OF SUIT

This was an injunction suit filed by C. N. Love, W. L. Davis, J. B. Grigsby, Wililam Nickerson, Jr., Newman Dudley, Jr., and Perry Mack as Plaintiffs in the court below against Jas. S. Griffith, Alvin D. Moody, Robert Ring, James E. Donavan and Fred D. Dwyer as members of the city Democratic Executive Committee of the city of Houston, Texas, and G. W. Stacy and thirty others as election judges

of the various voting boxes in the city of Houston, as dedendants.

The said Executive Committee had promulgated a rule that only white voters would be permitted to vote in the primary election to be held in the city of Houston to nominate a candidate for Mayor and the other Officers to be voted for at the general election to be held in April. (See Transcript of record, Page 5, Exhibit A). The primary election was to be held on the 9th of February. This rule of the Committee that only white voters would be permitted to vote in said primary election had been published in the daily papers of Houston as notice to the colored voters. This suit was instituted to restrain the said Committee and election judges from holding a strictly white man's primary and to compel them to permit these plaintiffs and their race to vote in said primary election. (See Transcript, Page 3).

The defendants filed their answer which consisted of a general demurer and denial that any legal rights of plaintiffs had been violated. (Tr. Page 7). Upon hearing by the court the facts alleged in plaintiff's petition were allowed to stand as proved and argument was heard on the demurer to the petition. The court sustained defendant's general demurer holding that the question of voting under our primary election Statutes was a political one and not a legal one and that the court was without jurisdiction to interfere with the action of the party Committee.

Plaintiffs were dismissed and they gave notice of appeal to the 1st court of Civil Appeals of Texas, at Galveston, Texas. The court of civil appeals also dismissed plaintiffs with a written opinion which appears on page 13 of the record, holding in substance that since the election had passed the equity of the bill had failed. Plaintiffs filed motion to rehear in this court which was overruled, and they there-

upon sued out a writ of error to the Supreme Court of Texas, which Court dismissed the case for want of jurisdiction but refused to write an opinion. Since the Court of Civil Appeals was the last court to write an opinion, plaintiffs bring this case from that court to this court upon a writ of error.

SPECIFICATIONS OF ERRORS.

First Specification of Error

The said Court of Civil Appeals erred in dismissing this case, and holding that the equity of the original bill in the trial Court had failed, because the election had passed, for the reason that the bill was filed in the trial court in time.

Second:

The said Court of Civil Appeals erred in refusing to retain the case and adjudicate the questions of law raised by the bill in the Trial Court, for the reason that there were directly pleader in the Trial Court, The Constitution of Texas, The Statute of Texas and The Constitution of the United States.

Third:

The said Court of Civil Appeals erred in not holding the Appellants had the right to vote in said Primary Election, for the reason that said Court of Civil Appeals had previously held the primary election in Texas to be an election to all intents and purposes the same as any other Statutory Election; and because the Constitution of the State of Texas guarantees said right to said Appellants as appears in the record in this case; and because the fifteenth amendment to the Constitution of the United States prohibits any such discrimination as was complained of in the original bill in the Trial Court. (For original bill, see Tr. P. 3).

INTRODUCTION

This case is noteworthy in that it involves much more than the right of these petitioners to vote at a legal primary election. The answer to this question, whether or not these petitioners had a right to vote in that primary election, must settle the question for all the Negro voters of the State of Texas and incidentally for all the Negro voters of the Nation; for if one State can legally bar them from voting in a statutory primary election on account of their race in the face of the Fifteenth Amendment, any other State con do likewise. It follows, then that all political parties can do likewise and in the face of present agitation, the time can and will come when Negroes will be as completely disfranchised as if that right were never guaranteed by the XVth amendment to the Federal Constitution, while all other races will be free from this kind of discrimination. There is, therefore, only one question to be answered by the court and that is can the State Legislature of Texas, or the practice of election judges and party committees under that law be upheld in disfranchising Negroes otherwise qualified to vote and at the same time, give suffrage to other races possessing the same qualifications.

The remedy for such wrongs as are herein complained of, as will appear in its proper place under the argument will also come in for consideration before the court.

On the 27th day of January notice was given through the daily papers of Houston that no Negroes would be allowed to vote in said election which was to be held on the 9th day of February following. (Exhibit A, Tr. P 5). Suit was filed on the 2nd day of February and the cause was set for trial on the 5th, leaving only four days before election for the matter to be finally decided by the courts. The court of Civil Appeals dismissed the petitioners herein because the

election had passed when the case came before them for hearing. The hearing was had about December 21st, 1921.

If this is correct doctrine, then there is a grave wrong existing in Texas, with no remedy because there cannot be time enough from the date of promulgating a rule like this to the date of election. If the holding of the court of civil appeals is correct, there can never be a remedy for this wrong because there is not time enough allowed to completely adjudicate a question like this. But equity says there shall be no wrong without a remedy and so we think the law to be on this point.

BRIEF OF ARGUMENT.

First:

The Court of Civil Appeals should have retained jurisdiction of this cause and settled the question of law under consideration and adjudicated the rights of the parties in this cause because the suit was filed seven days prior to the election. If their rights existed then the passing of the election gave no lawful excuse for dismissing their case. (21 Corpus Juris, P. 145, Section 124).

Second:

The petitioners had a right to vote in said election because they were qualified under the Constitution of Texas, her statutes and laws the same as white citizens were; and the Statute creating the election declared it to be a lawful election the same as any other; and both the court of Civil Appeals and the Supreme Court of the State of Texas have construed the primary election to be an election to all intents and purposes the same as any other election created by law. (62 T. C. A. 262; 103 T. 491, 108 T. 167).

Third:

The petitioners, being citizens of the State of Texas and qualified to vote in all elections the same as other citizens

and the Constitution of Texas having conferred the suffrage on all of its citizens alike, could not be prohibited from voting in said election because the fifteenth amendment to the Constitution of the United States prohibits such discrimination by the State of Texas: XV Amend. Con. U. S.

ARGUMENT.

(1) Jurisdiction of the Court of Civil Appeals.

By weight of authority, the court of Civil Appeals had jurisdiction and should have held the case, and construed the law, and settled the questions arising under the petition for the following reasons:

(a) Because the Petition of Plaintiffs in error was filed and heard in the lower Court before the election was held. The petition was filed in the 11th District Court of Harris County, Texas, on the second day of February, 1921, and heard on the 5th day of February following. (See Tr. P. 35). Whether the equity of the bill should fail because the election had passed when the Court of Civil Appeals reviewed the case, we cite the following authority:

> "The test of the jurisdiction of a court of equity is whether facts exist at the **time** of the commencement of the action sufficient to confer jurisdiction on the court. If plaintiff is then entitled to the aid of equity, the Jurisdiction will **not** be defeated by subsequent event which render equitable relief unnecessary or improper. This rule is applicable not only where the relief sought is prevented by act of the defendant but also where the change of circumstances arise from lapse of time rendering the specific relief unsuitable or inequitable." (21. C. J. P. 145, Sec. 124, Beedle vs. Bennett, 122 U. S. 71; Clark vs. Wooster 119 U. S. 322).

BEEDLE VS. BENNETT, 122 U. S. 71.

In this case, the bill in equity was filed May 15th, 1883, to restrain the infringement of a patent, and the decree was rendered December 6th, 1886, but as the patent had expired at that time no injunction was granted and only damages awarded. Defendants appealed. Upon the question of jurisdiction, which was raised also here, the court said:

> "As the patent was in force at the time the bill was filed and the complainants were entitled to a preliminary injunction at that time the jurisdiction of the court is not defeated by the expiration of the patent, by lapse of time, before final decree."

SECOND SPECIFICATION

The jurisdiction of the case should have been retained by the Texas court of Civil Appeals because there was drawn in question the statute, and Constitution of Texas, and the Constitution of the United States. The original bill in the trial court put all these instruments in issue. See Plaintiff's Original Petiton, P 3 of Tr. of the record.

In support of the above proposition, we submit the following:

> "Wherein a suit of which eqiuty has jurisdiction, the question of the right to an office, or as to the regularity of an election, arises, and must be decided to obtain the equitable relief, the court has power to inquire into and decide these matters for the purpose of the suit." 21 C. J. P. 147, Citing 84 Ala. 613, 76 Miss. 141, 23 N. J. Eq. 216.

THIRD SPECIFICATION OF ERROR.

The plaintiff in error had a right to vote in said election and the court of Civil Appeals had no right to dismiss their

appeal but should have granted the relief prayed for because the constitution of the state and statute of Texas conferred that right upon all citizens of the state possessing the same qualifications as did these petitioners. The following is the Constitution of Texas on suffrage:

> "The following classes of persons shall not be allowed to vote in this state to-wit: First. persons under twenty-one years of age; second: idiots and lunatics; third: all paupers supported by any county; fourth: all persons convicted of any felony, subject to such exemptions as the Legislature may make; fifth: all soldiers, Marines and Seamen employed in the service of the Army or Navy of the United States.
>
> "Section 2. Every male person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this state one year next preceeding an election; and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector." Savage/Humphres 118 S. W. 894.

STATUTE OF TEXAS ON SUFFRAGE. TITLE 49.

The state election statute on general elections adopts the above sections of the state constitution, with the addition of a poll tax requirement. Art. 2938 R. S. Texas McEachins.

PRIMARY ELECTION STATUTE.

The primary statute requires a poll tax receipt as a prerequisite to voting in such primary and provides "That the executive committee of any party for any county may prescribe additional qualifications for voters in such primaries, not inconsistent with this title."

PRIMARY ELECTION DEFINED.

Art. 3085. Title 49 R. S. of Texas on primary elections defines a primary election as follows:

"The term 'Primary Election' as used in this chapter means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of the party."

PARTY NOMINATION FOR CITY AND TOWN ELECTIONS.

Id. Art. 3170:

"In each city and town in this state in which a political party may desire to make nominations, there shall be held at least thirty days prior to the regular election, an election at which there may be nominated, by each political party, officers to be elected at the next city election, and at which said election there shall be selected the executive committee for said city or town herein previded for; and in all such city primary elections the provisions of the law relating to primary elections and general elections shall be observed."

IS THE PRIMARY AN ELECTION?

The primary election is an election to all intents and purpose the same as the general election. This has been held by the court of civil appeals from which this case comes in the case of Anderson vs. Ashe, 62 T. C. A. 262; and also held by the supreme court of Texas in the cases of Ashford v. Goodwin, 103 T. 491 and Wapples vs. Gilmore 108 Tex. 167.

Anderson vs. Ashe.

This was a suit to compell the district judge of Harris county to hear and determine a contested primary election. The trial court (and being the same one from which this case comes) dismissed the case for want of jurisdiction. Upon this phase of the case the court of civil appeals for the first district (the same one also from which this case comes to this court), held the following:

"We come now to a consideration of the question of whether the Constitution authorizes the legislature to confer jurisdiction upon the district court to hear and determine primary election contests. Sec. 8 of Art. 5 of the constitution, as amended in 1891 expressly conferred upon the district court jurisdiction 'of contested elections' and further provides that 'said court shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this constitution and such other jurisdiction original and appellate as may be provided by law.

"It is insisted by respondent that the term 'Contested elections' as used in this section of the constitution can not be construed to include primary election contests, but must be restricted to the contest of elections by which the final choice of the people for a public officer or measure is expressed. In support of this contention a number of cases from other jurisdictions are cited in which the word 'election' as used in constitutions and statutes under constructions in said cases is held not to include a primary election. The decision of most of these cases are controlled by the context of the provision of the constitution or statute under construction, and the applicability of

some of these opinions is greatly weakened if not destroyed by the fact that it does not appear that the party primary election referred to in the opinions were statutory elections. If any of the cases cited can be held directly in point we do not feel constrained to follow them. We are of the opinion that the word **'elections'** as used in the section of our constitution above quoted should be construed to include any election in which the public or a large portion thereof participate, and which is held under and regulated by the statute of this state.

"Prior to the adoption of this amendment of our constitution it had been held by our supreme court in the cases before cited that an election contest being in its nature political, the jurisdiction to decide such contests was not conferred by the constitution upon the district court, nor was the legislature authorized under the constitution to confer such jurisdiction upon that court. To meet these decisions, the amendment to the constitution before mentioned was adopted, and it cannot be doubted that in the adoption of this amendment the people intended to give the District court the power or jurisdiction to hear and determine the contests of any public election held under and regulated by the general election statutes of this state.

"The contest of a primary election held under the present statute of this state authorizing and governing such elections, is in no sense more of a political or non judicial question than the contest of a general election, and while, primary elections were not authorized by law at the time the amendment to the constitution was adopted, and was not in the minds of the electors when they voted for said amendment we think such elections are clearly included in the terms of the amendment."

ASHFORD VS. GOODWIN

In this case the relator Ashford claimed to have received a plurality of all the votes cast for public weigher in a precinct of Coleman County, and applied for a writ of mandamus to compel the county clerk to put his name on the official ballot as the nominee of the democratic primary election. The district court wherein the suit was begun declined to issue the writ of mandamus, one of the points of objection being that the district court had no jurisdiction over primary election contests. The Legislature had conferred jurisdiction on the district court to hear and determine primary election contests. The case was appealed to the supreme court for the writ to compel the district judge to hear the case. Upon the question of jurisdiction the court said:

> "The language used in the constitution 'contested elections,' is broad enough to justify the construction placed upon it by the legislature, and there being nothing in the constitution which limits the meaning of the word used, the Legislature did not exceed its authority in the enactment of the statute."

GILMORE VS. WAPLES ET AL.

This was a suit seeking an injunction to restrain the Democratic State Executive Committee from making a nomination for the office of railroad commissioner. The case presents two questions for decision, one as to the power of the committee to make a nomination under the existing conditions, and the other as to the right of the plaintiff to invoke the equitable remedy of injunction. The court commenting upon this phase of the case said:

> "If there is no provision of law interdicting the proposed action of the committee, no legal right of the plaintiff can be said to be threatened with impairment,

and the case presents merely a party dispute which the courts will remit to the party forum. On the other hand, if the proposed action of the committee is prohibited by law, a judicial question is presented; and if such action threatens a legal right of the plaintiff and the infliction upon him of a material injury for the redress of which no adequate legal remedy exists, his right to equitable relief cannot be denied."

It was contended by the committee that the primary election law and nominations thereunder presented mere political questions over which the court had no jurisdiction, the same position is taken in this case by the trial court at Houston, Texas. Speaking upon this phase of the case, the Supreme Court of Texas continues:

"The contention of the committee upon this phase of the case is that there is presented but a political question and at most but a political right, and for the protection of such a right equity will not extend its aid. This would be true as to the character of question and right involved, but for the fact that making of party nominations in this State is regulated by law. With our legislation covering the subject, whether a given nomination has been made in accordance with that legislation or in violation of it, presents not a political question, but necessarily, a judicial question. For what purpose and to what end, it may appropriately be inquired, have the various statutes in relation to party nominations been enacted in this State if the rights and duties therein defined and the matters they purport to govern still present mere political questions, to be settled alone by party law and in the party forum, and are, therefore, beyond the cognizance of the courts? The very purpose of this legislation was to re-

lieve these matters of their mere politcal character, as was their nature aforetime, and subject them to the regulation of the statute law. The courts exist only to enforce the law. This includes the statute law. If they have no cognizance of rights arising under a civil statute regulating a political party, upon the ground that the body regulated is political, and, therefore, any question affecting it is also political, though in terms governed by an express statute, it must follow that a political party is beyond the control of the law. But political parties are not beyond the control of the law. When regulated by law, their action to the extent that it is so governed may be reviewed by the courts as the only means of giving effect to the sovereign law of the State. In such case the inquiry is judicial because made the duty of the courts; and the questions presented are likewise judicial because arising under the written law."

It can be clearly seen from the above decision that the primary election law of Texas declares the primary to be a legal election; and also makes plain that the political question as set up in these cases to defeat the jurisdiction of the court, has been swept away and that instead, they present legal questions over which the courts of Texas have jurisdiction.

In view of the above decisions on the primary election statutes, it must follow that the primary election is a legal statutory election created by the same authority as the general election; and that the power of committees to prescribe rules contrary to the statute law itself and prohibited by the Constitution of the State of Texas, does not exist, but is prohibited by necessary implication drawn from the statutes themselves as well as the Constitution of the State of Texas.

Then, the question arises can such action by the State of Texas acting through its committee which is a body authorized by statutes to promulgate rules and call elections, bar these plaintiffs in error from voting in said election in face of the fifteenth amendment to the Constitution of the United States?

FIFTEENTH AMENDMENT

Section 1 of the Amendment provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race or color or previous conditions of servitude."

Under this article of the amendment, the States are prohibited from passing any law denying or abridging the right of citizens of the United States who are also citizens of that state, to vote in any election created by law, on account of race; or any practice of election judges or party committees had under such law. In support of the above proposition, we cite the following authority: U. S. vs. Reese 92 U. S. 214; U. S. vs. Harris 106 U. S. 629; U. S. vs. Crosby, 1 Hughes 448 Federal case No. 14893.

UNITED STATES VS. REESE 92 U. S. 214

In this case, speaking upon the fifteenth amendment to the Constitution of the United States, the court said:

> "The Fifteenth Amendment does not confer the right of suffrage on any one. It prevents the states or the United States, however, from giving preference in this particular to one citizen of the United States over another on acount of race, color or previous condition of servitude. Before its adoption, this could not be done. It was as much within the power of a State to exclude citizens of the United States from voting on

account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to the amendment, there was no constitutional guarantee against this discrimination; now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude."

CONCLUSION.

In conclusion the attention of the court is called to the far reaching influence of the questions presented in the foregoing pages of this brief, upon the rights of the Negro people, as protected by the fifteenth Amendment to the Federal Consituation. By this species of legislation the southern states have completely eliminated the Negro vote and influence in state, county and city government, notwithstanding their great property interest, education and general welfare. This very thing keeps the South solidly Democratic and it will remain so, as long as this kind of disfranchisement is allowed to go on. It will change when the ballot is placed in every citizen's hand, and this section will then go forward in development as never before. This is the election that settles everything, the general election being now a mere ratification of what the primary election did.

Further than this, it strikes at the vitals of the well being of Negroes in all the Nation, for if one state can pass, construe, and enforce such laws, and be within the per view

of the fifteenth Amendment any other State can do likewise, and in time the question can be Nation wide.

It is, therefore, most earnestly urged in the light of the statutes, constitutions, and decisions, thereunder, cited in the foregoing pages of this brief, and the manifest error of the lower court, in dismissing this case, and denying the justice that we think this case deserves, that this court reverse the holding of the court of Civil Appeals, and construe the law in this case, with such directions as justice and the law may require.

Respectfully submitted,

R. D. EVANS,

Atty. for Plaintiffs in Error.

LOVE ET AL. *v.* GRIFFITH ET AL.

ERROR TO THE COURT OF CIVIL APPEALS, FIRST SUPREME JUDICIAL DISTRICT, OF THE STATE OF TEXAS.

No. 12. Argued October 6, 1924.—Decided October 20, 1924.

1. A party who plainly asserted a federal right in a state trial court and whose appeal from an adverse judgment was dismissed by a higher state tribunal upon the ground that the case, after judgment, had become moot, is entitled to the judgment of this Court on whether such dismissal in effect denied, or failed duly to recognize, the right asserted; and local rules as to the extent of review will not necessarily determine the decision here. P. 33.
2. Where plaintiffs, as qualified electors, unsuccessfully sought to enjoin, as violative of the Constitution, the enforcement of a rule made by a City Democratic Executive Committee that negroes should not be allowed to vote at a particular Democratic primary election, their bill praying no other relief, and, months later, their appeal to a higher state tribunal was dismissed upon the ground that, the election having been held, the cause of action had ceased to exist and that the appeal would not be entertained on the question of costs alone, *held*, that the dismissal did not violate their constitutional rights. P. 34.

236 S. W. 239, affirmed.

ERROR to a judgment of the Court of Civil Appeals of Texas which dismissed an appeal from a judgment dismissing a bill for an injunction.

Mr. R. D. Evans for plaintiffs in error.

No brief filed for defendants in error.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill in equity alleging that the plaintiffs are qualified electors residing in Houston, Texas, and of the Democratic political faith; that on January 27, 1921, the City Democratic Executive Committee of Houston made and published a rule that negroes would not be allowed to vote in the Democratic City Primary Election to be held on February 9, 1921; that the Committee and Judges of Election threatened to enforce the rule, contrary to the Constitution of the United States; and praying an injunction to restrain the Committee and Judges of Election from carrying out their threats. The bill was filed on February 3, 1921. On February 5, 1921, it was demurred to generally, the demurrer maintaining that the rule did not infringe the Fifteenth Amendment. On February 7, 1921, the demurrer was sustained and the bill was dismissed with costs. The plaintiffs appealed to the Court of Civil Appeals, but that Court held that at the date of its decision, months after the election, the cause of action had ceased to exist and that the appeal would not be entertained on the question of costs alone. It therefore dismissed the appeal with costs. Error is assigned here on the ground that the Fifteenth Amendment prohibits the discrimination which was made the basis of the complaint, and that the decision denied the plaintiffs their constitutional rights.

When as here there is a plain assertion of federal rights in the lower court, local rules as to how far it shall be reviewed on appeal do not necessarily prevail. *Davis* v. *Wechsler*, 263 U. S. 22, 24. Whether the right was denied or not given due recognition by the Court of Civil Appeals

is a question as to which the plaintiffs are entitled to invoke our judgment. *Ward* v. *Love County*, 253 U. S. 17, 22. If the case stood here as it stood before the court of first instance it would present a grave question of constitutional law and we should be astute to avoid hindrances in the way of taking it up. But that is not the situation. The rule promulgated by the Democratic Executive Committee was for a single election only that had taken place long before the decision of the Appellate Court. No constitutional rights of the plaintiffs in error were infringed by holding that the cause of action had ceased to exist. The bill was for an injunction that could not be granted at that time. There was no constitutional obligation to extend the remedy beyond what was prayed.

Decree affirmed.